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C O N F I D E N T I A L SECTION 01 OF 02 MANILA 000631

SIPDIS

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TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)  
SUBJECT: EMBASSY PRESSES MARINE CASE AT HIGHEST LEVELS

REF: MANILA 610 AND PREVIOUS

Classified By: Ambassador Kristie A. Kenney for reasons  
1.4 (b) and (d).

11. (C) SUMMARY. The public about-face by the accuser in the rape case against Marine Lance Corporal Daniel J. Smith has created a public furor. The sworn affidavit by Smith's accuser, Suzette Nicolas, raising doubts whether any rape took place in November 2005, has caused the Philippine public to question whether the judicial process was fair to LCpl Smith, who was convicted in December 2006. Ambassador met with key officials in the Philippine government, including the Presidential Executive Secretary and the Interior Secretary, to impress upon them that Nicole's affidavit has transformed the very nature of discussions about LCpl Smith and it is incumbent upon the Philippine government to live up to its constitutionally mandated timelines for deciding cases. The Philippine officials acknowledged that the Philippine government has an obligation -- and an opportunity -- to quickly resolve this issue. END SUMMARY.

DELIVERING A TOUGH MESSAGE  
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12. (C) In frank and candid meetings with Presidential Executive Secretary Ermita March 19, and Interior Secretary Ronaldo Puno March 20, the Ambassador stressed the importance of moving with alacrity to resolve the case of U.S. Marine Lance Corporal Daniel J. Smith, whose appeal of a rape conviction in December 2006 has been pending in the Court of Appeals since October 2007 (reftel). Ambassador underscored that sentiment among U.S. Government and military officials had been transformed by Nicole's sworn statement to the Court of Appeals raising serious questions about whether the crime actually took place. Ambassador observed that the very foundation of the conviction -- that Smith committed the crime beyond a reasonable doubt -- had now been upended by Nicole's sworn statement that she entertained "doubts on whether the sequence of events ... really occurred the way the court found them to have happened."

13. (C) Noting that Smith's appeal had been pending in the Court of Appeals since October 2007, Ambassador pointed out that the Visiting Forces Agreement (VFA) requires that all U.S. personnel entering the Philippines pursuant to it must be accorded "all procedural safeguards established by the law of the Philippines," including "at the minimum . . . a prompt and speedy trial." The Ambassador noted that the Philippine constitution provides that cases in the Court of Appeals must be decided or resolved within 12 months, while Smith's case has been pending for 17. Both Ermita and Puno assured Ambassador that the Government understood the implications of Nicole's sworn statement and were carefully -- and quickly -- assessing the government's next steps.

PUSHING ON A BROAD DIPLOMATIC FRONT

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14. (C) Other Mission officials have been delivering similar messages to a broad spectrum of the Philippine government. In advance of the Ambassador's upcoming meeting with Foreign Secretary Alberto Romulo, who is currently out of the country, Polcouns met with Department of Foreign Affairs Assistant Secretary Lori Yparraguirre to apprise her of the shift in expectations in Washington as a result of Nicole's sworn statement. Other Mission officials met with Solicitor General Agnes Devanadera, who is prosecuting the case at the Court of Appeals, and with Interior Undersecretary Marius Corpus, designated by the Philippine government as the key interlocutor on Smith's custody.

PRESIDENTIAL DAMAGE CONTROL  
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15. (C) Meanwhile, Malacanang continued its efforts to debunk speculation linking Nicole's sworn statement and the phone conversation between President Obama and President Arroyo, as Press Secretary Cerge Remonde pointed out that Nicole's affidavit was signed March 12, while the presidential conversation took place March 14. For his part, Deputy Presidential Spokesman Anthony Golez urged against "emotionalism" on the issue, reiterating that Nicole had every right to proceed as she had.

PHILIPPINE SENTIMENT SHIFTING?  
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16. (C) Media commentary has begun to coalesce around the

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notion that Nicole's "recantation" -- as the press has taken to calling Nicole's statement -- buttressed Smith's defense that the sexual encounter was consensual, and emboldened more Filipinos to give Smith the benefit of the doubt. Philippine Daily Inquirer columnist Ramon Tulfo went as far as saying that "Nicole was never raped and our skewed justice system sent an innocent American to jail." Another Inquirer columnist, Amando Doronila, said that Nicole's departure "paved the way for the dropping of the rape case, doused cold water on the custody issue, and undermined calls for the review or abrogation of the VFA." Congresswoman Mitos Magsaysay, the first person who spoke with Nicole after the incident, noted that Nicole's latest affidavit "hews more closely" to what Nicole and other witnesses stated then. "I concluded then that there was no rape. There were obviously some people who took over and influenced her," Magsaysay said. House Foreign Affairs Committee Chairman Antonio Cuenco noted that Smith's appeal had been pending for years and urged the Court of Appeals to expedite action on the case. Still others, while expressing dismay over Nicole's decision, wished her well in her new life nonetheless.

PREPARING FOR MAJOR DEMONSTRATION  
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17. (C) As part of the continued anger directed by various fringe groups against the Visiting Forces Agreement (VFA) and the custody issue of LCpl Smith, the Embassy is preparing for a planned demonstration near the Embassy March 21. Spearheaded by various leftist groups, the demonstration is intended to mark the sixth anniversary of the U.S.-led invasion of Iraq. The demonstration is expected to include about 500 activists and several anti-administration politicians who oppose the VFA and the upcoming bilateral military exercises. The Ambassador raised the planned demonstration with DILG Secretary Puno, who assured her that Philippine law enforcement officials would strengthen their efforts to ensure Mission operations continue to function unimpeded.

COMMENT  
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18. (C) While public opinion seems to be shifting toward LCpl Smith, moving the Court of Appeals to a favorable decision may yet present serious problems. As a separate branch of government, the courts are jealous of their independence, and many justices seem to harbor political aspirations. Furthermore, left to its own devices, the court system tends to move at glacial speed. The challenge remains in persuading Administration officials to pressure the Court of Appeals into a speedy resolution of the case or alternatively, getting the Administration to take action itself, a move that is bound to have a price politically.

KENNEY